Supreme Court, U.S.
FILED

No. 04 2 JUN 2 8 2004

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In The

Supreme Court of the United States

STEVEN D. AISENBERG and
MARLENE J. AISENBERG,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI, VOLUME II, PAGES APP. 241 - APP. 351

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-10857-FF

UNITED STATES OF AMERICA, Plaintiff-Appellant,

versus

STEVEN B. AISENBERG, MARLENE J. AISENBERG, Defendants-Appellees

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On Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

(Opinion___, 11th Cir., 19___, ___F.2d___).

(Filed Mar 30, 2004)

Before: BLACK, HULL and COX, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES
CIRCUIT JUDGE

28 U.S.C. § 2412. Costs and fees

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his

or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time

expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection –

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost

of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) "party" means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of Title 5;

(C) "United States" includes any agency and any official of the United States acting in his or her official capacity;

(D) "position of the United States" means, in addition to the position taken by the United States in the

civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) "civil action brought by or against the United States" includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978;

(F) "court" includes the United States Court of Federal Claims and the United States Court of Appeals for Veterans Claims;

(G) "final judgment" means a judgment that is final and not appealable, and includes an order of settlement;

(H) "prevailing party", in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

(I) "demand" means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code,

or an adversary adjudication subject to the Contract Disputes Act of 1978, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

[**(5)** Repealed. Pub.L. 104-66, Title I, § 1091(b), Dec. 21, 1995, 109 Stat. 722]

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GRAND JURY 97-3

TESTIMONY OF STEVE AISENBERG

PLACE:	Grand Jury Room Federal Courthouse Tampa, Florida
DATE:	February 11, 1998 12:01 P.M.
REPORTER:	Debra Lombardo

APPEARANCE

For the UNITED STATES ATTORNEY:

STEPHEN M. KUNZ,
RACHELLE D. BEDKE,
Assistant United States Attorneys

RE: STEVE AISENBERG, and
MARLENE AISENBERG

[2] STEVE AISENBERG,

having been first duly sworn as a witness before this Grand Jury, testified as follows:

THE FOREPERSON: Please be seated, state your name and then spell it for the record.

THE WITNESS: Steve Aisenberg, S-T-E-V-E, A-I-S-E-N-B-E-R-G.

BY MR. KUNZ:

Q Good morning, Mr. Aisenberg. My name is Stephen Kunz. I'm an Assistant United States Attorney and seated to my left is Ms. Rachelle Desvaux Bedke, another Assistant United States Attorney. And the ladies and gentlemen in this room are members of a Federal Grand Jury and they're conducting an investigation into the disappearance of Sabrina Paige Aisenberg, and that occurred on or about November 24, 1997.

Now, sir, prior – you have been subpoenaed to appear before the Grand Jury this morning and affixed to the subpoena was a notification to you that you are a subject of the Grand Jury's investigation. Let me tell you and explain to you what that means. A subject is someone whose conduct comes within the focus of what the Grand Jury is looking at.

Pursuant to that notification, you were advised pursuant to the subpoena and its attachment that the Grand [3] Jury is currently conducting an investigation into a possible violation of federal statute, namely 18, United States Code, Sections 1201 and 1001. And you were also given a couple of other notifications of rights; number one, that you are – you can refuse to answer any questions before the Grand Jury today if the truthful response would tend to incriminate you.

Also, that anything you say before the Grand Jury could be used against you either in the Grand Jury or some future legal proceeding.

And, lastly, if you have counsel that you retained, you'll be given a reasonable opportunity when appropriate

to exit the Grand Jury to consult with counsel if you feel that's necessary.

Do you understand those rights?

A Yes.

Q Okay. Now, the last thing, Mr. Aisenberg, is just to explain to you a little bit about a Federal Grand Jury. This is an official proceeding under the law and what that means essentially is it's much like appearing in court. If you – and you've been sworn to testify to the truth. If you make a false statement to the Grand Jury this morning or this afternoon during your testimony and that testimony is – that false statement is material to the Grand Jury's investigation, you would be subjected to being prosecuted [4] for perjury which is punishable by up to five years imprisonment, a $250,000 fine or both.

Do you understand that?

A Yes.

Q Okay. Mr. Aisenberg, can you please tell the ladies and gentlemen of the Grand Jury, where do you live?

A 3632 Springwell Drive.

Q And how long have you lived there, sir?

A On the advice of my counsel, I respectfully refuse to answer the question because it may tend to incriminate me.

Q Mr. Aisenberg, can you tell the Grand Jury, by whom are you employed, if anybody?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q On or about November 24, 1997, when Sabrina Paige Aisenberg disappeared, can you tell the Grand Jury what your employment was?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may incriminate me.

Q Are you currently married to a lady by the name of Marlene Aisenberg?

A On the advice of my counsel, I respectfully refuse [5] to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, sir, the members of your family, if you have any children and their names?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, sir, what your educational background, if any, is?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, sir, what your employment background is?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury how long you've lived in the State of Florida, sir?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Mr. Aisenberg, the type of home that you live in?

A On the advice of my counsel, I respectfully refuse [6] to answer the question because the answer may tend to incriminate me.

Q Can you describe to the Grand Jury the property you have, is it fenced-in and any other circumstances surrounding the exterior of the residence?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Mr. Aisenberg, can you tell the Grand Jury if you or your wife primarily take care of the child care for any children that you have in the family?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Mr. Aisenberg, if on November 24, 1997, you had any sort of security alarm system or burglar alarm system installed in your residence?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, sir, if on or about November 24, 1997, that security alarm system was operational or not?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to [7] incriminate me.

Q Sir, can you tell the Grand Jury if, in fact, you have any pets and if, in fact, one of them is named Brownie, a dog who is reported by neighbors to bark on a regular basis towards strangers?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you describe to the Grand Jury the number of cars that you own?

A On the advice of my counsel, I respectfully answer – refuse to answer the question because the answer may tend to incriminate me.

Q Mr. Aisenberg, can you tell this Grand Jury if, in fact – excuse me.

Can you tell this Grand Jury the location of the automobiles on or about November 24, 1997? Were they parked in the driveway, in the garage, or where they were located?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q On the afternoon before the disappearance of Baby Sabrina, Mr. Aisenberg, can you tell the Grand Jury where you were and what you were doing?

[8] A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury where you worked on that Sunday, November 23, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Mr. Aisenberg, did you have – on or about November 24, 1997, did either you, your wife or any of the children – were you all taking any medication or any over-the-counter drugs or any prescribed medicine whatsoever?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may incriminate me.

Q Prior to the disappearance of Sabrina, Baby Sabrina, had you observed any injuries to her on her face?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Had you observed any problem with her hair, namely that it appeared as if some hair had been pulled

out according to video that was taken by your wife on or about [9] November 22, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you explain for the Grand Jury why the video that was taken two days before the disappearance of the baby appears to indicate some injuries were on the baby, Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury or assist the Grand Jury in its investigation and shed any light onto why a month earlier in October 1997 photographs of Baby Sabrina indicated no such injuries as appeared in the videotape?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury if, in fact, you were in Pasco County at your real estate office on Sunday, November 23, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Mr. Aisenberg, if [10] anyone came to your office, your place of employment, on Sunday, November 23, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, sir, if you met with anybody at your place of employment or anywhere else on Sunday afternoon, November 23, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, sir, what time you arrived home from work on Sunday, November 23, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may incriminate me.

Q Sir, can you tell the Grand Jury what the condition of the family members were when you arrived home on Sunday evening, November 23, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury what Baby Sabrina was fed on the evening of November 23, 1997?

A On the advice of my counsel, I respectfully refuse [11] to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Mr. Aisenberg, who the person was that you took to John Martin's house on that Sunday, November 23, 1997, to show them a home?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you explain to the Grand Jury why you told law enforcement officers that you had to lower the mattress in Baby Sabrina's crib prior to her disappearance?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Prior to the disappearance of Baby Sabrina, Mr. Aisenberg, had Baby Sabrina fallen or gotten hurt in any sort of accidental way?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Sir, are you aware of any manner of hard play that your daughter Monica and your son William interacted with Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to [12] incriminate me.

Q Can you tell the Grand Jury if you were responsible for feeding Baby Sabrina on a regular basis and, if not, who was?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury what Baby Sabrina was fed and when she was fed prior – the evening prior to her disappearance?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q On the morning of November 24, 1997, Mr. Aisenberg, did you or your wife initially discover that Baby Sabrina was missing?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did you have occasion on the morning of November 24, 1997, to take the phone from your wife on a 911 call and then talk to the sheriff's office officers with respect to the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to [13] incriminate me.

Q Can you describe what you saw and how it occurred when you learned that Baby Sabrina was missing?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Mr. Aisenberg, were you interviewed or have you been interviewed by both sheriff's deputies and FBI agents concerning the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Sir, have you told the truth to the investigating agents with respect to your knowledge of the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Have you made any false statements or any misstatements to any person since November 24, 1997, concerning your knowledge of the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

[14] Q Sir, do you have any information that you can assist this Grand Jury in its investigation in determining what happened to Sabrina Paige Aisenberg on November 24, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Mr. Aisenberg, do you have any names of any individuals who you can tell this Grand Jury should look at who may be responsible for the disappearance of Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Are you going to provide any information to assist this Grand Jury in trying to identify those individuals who were responsible for the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

MR. KUNZ: Okay. You may step down, then, Mr. Aisenberg.

(Witness excused at 12:15 p.m.)

* * *

[15] CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a correct and complete report of the proceedings detailed therein, reported by me personally and transcribed under my supervision.

Feb. 17, 1998
DATE

/s/ Debra Lombardo
DEBRA LOMBARDO,
Grand Jury Reporter

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GRAND JURY 97-3

TESTIMONY OF MARLENE AISENBERG

PLACE:	Grand Jury Room Federal Courthouse Tampa, Florida
DATE:	February 11, 1998 11:44 A.M.
REPORTER:	Debra Lombardo

APPEARANCE

For the UNITED STATES ATTORNEY:

STEPHEN M. KUNZ,
RACHELLE D. BEDKE,
Assistant United States Attorneys

RE: STEVE AISENBERG, and
MARLENE AISENBERG

[2] MARLENE AISENBERG,

having been first duly sworn as a witness before this Grand Jury, testified as follows:

THE FOREPERSON: Please be seated, state your name, and spell it for the record.

THE WITNESS: Marlene Aisenberg, M-A-R-L-E-N-E, A-I-S-E-N-B-E-R-G.

BY MR. KUNZ:

Q Ms. Aisenberg, good morning. My name is Stephen Kunz. I'm an Assistant United States Attorney and the ladies and gentlemen in this room are members of a Federal Grand Jury and they're conducting an investigation into the disappearance of your five-month-old daughter Sabrina Aisenberg, and that occurred back on November 24, 1997.

You have received a subpoena for your appearance here today and affixed to the subpoena was an advisement of rights. And the rights that you were advised, Ms. Aisenberg, were, number one, that you were a subject of the Grand Jury's investigation. And that simply means that your conduct comes within the focus of what this Grand Jury is looking at, namely the disappearance of Baby Sabrina.

You were advised that the Grand Jury is looking into a possible violation of federal law, namely Title 18, United States Code, Sections 1201 and 1001.

[3] Now, you also were advised, ma'am, that you may refuse to answer any question if the truthful answer would incriminate you in any fashion.

You also were advised in the rights notice that was affixed to your subpoena that anything you say may be used against you either in the Grand Jury or any subsequent legal proceeding.

And if you have retained counsel, the Grand Jury will permit you an opportunity during your Grand Jury appearance this morning to step outside on a reasonable basis and consult with counsel if you feel it's necessary.

Do you understand those rights?

A Uh-huh.

Q Okay. Just need a yes or no, ma'am.

A Yes.

Q And if you can approach the microphone or sit up closer to the microphone.

A Yes.

Q Okay. Now, you need to understand, Ms. Aisenberg, that a proceeding before a Federal Grand Jury is an official proceeding; it's like being in court. If you were to make a false statement to the Grand Jury today while under oath and your statement is material to the Grand Jury's investigation, you could be subject to prosecution for perjury.

[4] Do you understand that? Ma'am? You have to say yes or no.

A Can you say that again, please?

Q Yes, ma'am. Appearing before a Federal Grand Jury, you've been placed under oath. And this is just the same thing as if you were appearing in open court. If you were to make a false statement today while under oath and that statement is material to the Grand Jury's investigation, you could be prosecuted for perjury, which is punishable with up to five years imprisonment, $250,000 fine, or both.

Do you understand that?

A Yes.

Q Okay. Also this morning, ma'am, during your appearance before the Grand Jury, Ms. Aisenberg, if at any time you need a break or anything else, please let us know and we'll be glad to accommodate you. All right?

A Uh-huh.

Q Now, Ms. Aisenberg, can you please indicate to us, first of all, where do you live?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q And can you tell the members of the Grand Jury, Ms. Aisenberg, the members of your family?

[5] A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, are you married to an individual known as Steven Aisenberg?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q And could you tell the Grand Jury when you were married to Mr. Aisenberg and for how long you've been married to him?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Ms. Aisenberg, the nature of your education? What educational background do you have, if any?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Ms. Aisenberg, the names of any children that you have?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

[6] Q Can you tell the Grand Jury when you first moved to Florida, the State of Florida, Ms. Aisenberg?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you advise the Grand Jury of any circumstances about why you and your husband and your family moved from Maryland, the State of Maryland, to the State of Florida?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, are you employed outside the home?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q And can you tell the Grand Jury the nature of any occupation or employment you have outside the home, including the hours that you work and the duties that you currently do?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you describe to the Grand Jury the type of neighborhood that you currently reside in, Ms. Aisenberg?

A On the advice of my counsel, I respectfully refuse [7] to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury if, in fact, your residence has a security alarm or not?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Ms. Aisenberg, with respect to where you currently reside if, in fact, you were residing at that location on November 24, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q How many cars do you and your husband own, ma'am?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you describe the security procedures you have for your residence, including any security devices for the doors, any alarm system, or what have you?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q The property that you have, the outside exterior of your residence, ma'am, is it a fenced-in property?

[8] A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Do you have any pets in your family, in addition to your family?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Now, is there a dog named Brownie who you have who is known among the neighbors to bark at strangers on a regular basis?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q On November 24, 1997, did you place a 911 call to the Hillsborough County Sheriff's Office and report that your baby Sabrina was missing?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury what you reported to the sheriff's office and what you described?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

[9] Q Prior to November 24, 1997, Ms. Aisenberg, were you responsible for the care of Sabrina Paige Aisenberg?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q On November 24, 1997, when a phone call was made by a Marlene Aisenberg to the sheriff's office reporting the disappearance of Sabrina Aisenberg, did you determine if any other items were missing from the residence?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did you determine if, in fact, a baby blanket was missing along with your daughter Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the members of the Grand Jury the feeding schedules of Baby Sabrina prior to her disappearance, if she was fed and by whom?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury, Ms. Aisenberg, if Baby Sabrina was fed by means of bottles or if she was [10] actually eating some hard food?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, can you tell the Grand Jury if, in fact, Baby Sabrina slept any specific periods of time on a regular basis?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Prior to the disappearance of Sabrina Aisenberg, was she on – did she have any illness or any problem with her health, ma'am?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q And prior to November 24, 1997, were any members of the family, you, Steven, Monica or William Aisenberg, were you taking any medication, whether it be cold medication or prescription medication or over-the-counter medication of any type?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Prior to the disappearance of your daughter [11] Sabrina, ma'am, was she taking any medicine or medication?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did Baby Sabrina have any metabolic problem or any problem with respect to her body that had her sleeping an extensive amount?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Had you taken Baby Sabrina to any pediatrician for any condition prior to November 24, 1997?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you describe to the Grand Jury the condition of Baby Sabrina prior to her disappearance on November 24th?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Was Baby Sabrina eating well prior to the Sunday before she had disappeared?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to [12] incriminate me.

Q Did Baby Sabrina have any bruises on her body prior to her disappearance on November 24, 1997, ma'am?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did Baby Sabrina have any problems with her hair, any bald spots or any spots on her head where hair had been removed or pulled out?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, can you explain to the Grand Jury why photographs made from the video that you had taken of Baby Sabrina indicate that there are some apparent injuries to Baby Sabrina on her face and also her head having some hair missing?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, can you explain to the Grand Jury why photographs taken of Baby Sabrina in approximately October of 1997 don't indicate any injuries to the baby as are depicted from the video?

A On the advice of my counsel, I respectfully refuse [13] to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury what you did on the Sunday before the disappearance of Baby Sabrina, ma'am?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury what Mr. Aisenberg, Steven Aisenberg, did prior to the disappearance of Baby Sabrina on that Sunday?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q When you woke up on November 24, 1997, Ms. Aisenberg, can you explain to the Grand Jury what you observed and what you did?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did you check all the rooms in your residence to see the condition of the children?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ma'am, can you tell the Grand Jury if, in fact, [14] you've been interviewed by investigators either with the sheriff's office or the Federal Bureau of Investigation?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did you tell the investigators everything that you know, Ms. Aisenberg, about the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, have you lied to any person concerning what you know about the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Have you provided investigators with information or suspects or any details of any situation concerning who you think may have been involved in the disappearance of Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury if your husband, [15] Steven Aisenberg – if you had ever observed him mistreating any of the children, namely Monica, William or even Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Did Monica your daughter or William your son ever play very hard with Baby Sabrina?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Can you tell the Grand Jury if you're aware of your husband Steven Aisenberg whether he has a history of violent behavior or not?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ms. Aisenberg, are you aware of any violent behavior conducted by your husband after he had resigned from a job in Virginia following an allegation of a sexual assault that he was involved in?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Ma'am, will you answer any questions of the [16] Grand Jury today concerning the disappearance of Sabrina Paige Aisenberg?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

Q Will you provide any information to this Grand Jury, ma'am, concerning the disappearance of your child?

A On the advice of my counsel, I respectfully refuse to answer the question because the answer may tend to incriminate me.

MR. KUNZ: Ms. Aisenberg, you may step down, ma'am.

(Witness excused at 11:59 a.m.)

* * *

[17] CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a correct and complete report of the proceedings detailed therein, reported by me personally and transcribed under my supervision.

Feb. 17, 1998
DATE

/s/ Debra Lombardo
DEBRA LOMBARDO
Grand Jury Reporter

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GRAND JURY 97-3

TESTIMONY OF LINDA BURTON

PLACE:	Grand Jury Room Federal Courthouse Tampa, Florida
DATE:	February 4, 1998 11:38 A.M.
REPORTER:	Debra Lombardo

APPEARANCE

For the UNITED STATES ATTORNEY:

STEPHEN M. KUNZ,
RACHELLE D. BEDKE,
Assistant United States Attorneys

RE: AISENBERGS

[2] LINDA BURTON,

having been first duly sworn as both a witness and an agent before this Grand Jury, testified as follows:

THE FOREPERSON: Please be seated, state your name, and spell it for the record.

THE WITNESS: Linda Burton.

BY MR. KUNZ:

Q And how do you spell your last name?

A B-U-R-T-O-N.

Q And by whom are you employed, ma'am?

A Hillsborough County Sheriff's Office.

Q And in what capacity is that?

A I'm a detective.

Q Okay. And how long have you been a detective with the sheriff's office?

A Seven years in March.

Q And do you have any specialized or assigned duties as a detective?

A Yes. I work in the juvenile unit.

Q Okay. In any specific capacity?

A I work physical and sexual abuse of children.

Q Okay. Detective Burton, I'm going to take you back to November 24, 1997. Did you have occasion to respond to a reported abduction or kidnapping of a baby, Sabrina Aisenberg?

[3] A Yes, I did.

Q Okay. And are you currently involved in that particular investigation?

A Yes, sir, I am.

Q Okay. Can you tell the Grand Jury first of all, how quickly did the sheriff's office respond to a 911 call for assistance from the Aisenberg residence on November 24th?

A I believe it was seven minutes from the time they received the call until the deputy responded.

Q Okay. And when the deputy responded, did he subsequently contact detectives to follow up and come on out to the crime scene?

A Yes, sir.

Q Okay. And did you subsequently go out to that location that day?

A Yes, sir, I did.

Q Okay. Can you tell the Grand Jury what you did and what you observed when you first went out to that location?

A When I first arrived, I spoke with Sergeant Lee, who was the supervisor in charge, and Deputy Warren, who was the deputy that initially responded. They advised that they had gone in, they checked the house, the baby wasn't in the house, that they had already requested the 911 call [4] be transcribed, that they were on their way to do a check of all the dumpsters in the area and to check the neighborhood and do neighborhood surveys, talking with the neighbors that lived in that area.

Q Okay. At approximately what time did you arrive at the scene?

A I believe it was around 8:15.

Q And the call had come in somewhere around 6:40 in the morning, would that be fair to say, 6:45, something like that?

A 6:42, yes, sir.

Q Now, did you have occasion to meet with Mr. and Mrs. Aisenberg, namely Steve and Marlene Aisenberg?

A Yes, I did.

Q And when you first arrived, did you interview them, or did that happen a little bit later?

A That happened a little bit later in the morning about – I interviewed Marlene around 9:00 something.

Q And prior to interviewing Marlene, did you do anything with respect to the interior of the house?

A I basically looked around the house and tried to see if there was any signs of forced entry, that kind of thing, just a cursory look around.

Q Okay. And what did you notice, if anything, with respect to the interior of the residence or the exterior?

[5] A The house was in total disarray. I mean, it was – there were clothes lying all over. There were toys lying all over. There were piles of clothing. There was a big pile of clothing on the bed of the parents. The children's rooms, they were all messy. And that's basically what I noticed. And I could not find a point of entry that had been – as if the house had been burglarized.

Q Okay. Now, did you have any evidence technicians, for lack of a better phrase, search the area of Baby Sabrina's room?

A Yes. They came later that morning.

Q Okay. Can you tell the Grand Jury, what did – when you spoke with Marlene Aisenberg, can you briefly describe, first of all, what her demeanor was and then what she told you?

A Well, her demeanor at that point, she was quiet, then she would laugh. She would change emotions frequently through the interview. She was never – she wasn't crying. She wasn't upset. It was mostly just answering questions and periodically laughing during the interview.

Q Okay. And could you tell the Grand Jury what did Mrs. Aisenberg, or Marlene Aisenberg, tell you about what had happened there that particular evening or early morning [6] hours?

A Do you want me to start like Saturday – I mean, Sunday night?

Q Sure, whatever she told you.

A Well, basically what she told us, we asked her – I asked her to go back to the first part of Sunday. She said she had gone to a party for her nephew that she had put on through Playtime Pals. And there had been several children and adults that had attended that party. She arrived there about 10:45 and left around 2:00. She went –

Q Can I just interrupt you one second, Detective Burton?

A Sure.

Q If you can explain to the Grand Jury, what did Mrs. Aisenberg indicate Playtime Pals was? What was Playtime Pals?

A It's her business. It's a – what you do is she would have the child and a mother get together and they would talk and play and sing songs and that kind of thing. It was an interactive play time for mother and child.

Q And was that business conducted out of the Aisenberg home or somewhere else?

A It was conducted at a day care center that she had a little building off of that day care center that she used [7] for her business.

Q I'm sorry, go ahead.

A Let's see, so she said she had left the Playtime Pals party around noon – correction – around 2:00, and she went to the Publix and bought some groceries. Then she went home. She put Sabrina down for her nap. She woke – the baby awakened a little bit later. She cooked dinner. Steve came home. She went to – she went to Blockbuster to take in two movies. After she did that, she came back home. She put the children to bed around 9:00. She and her husband watched a movie.

At about 11:00 she went in and checked on the children. They were – Monica and William were still awake. They had to tell them to go to sleep. She looked in – she says she went into Sabrina's room, kissed her, while Steve looked into the room. He went into William's room, kissed him goodnight, then went into Monica's room and got into bed with her. Then she went to William and then she went into Monica's room. She got into bed. They talked for a little while. Monica wouldn't go to sleep. They figured they should leave, so they left the bedroom.

They went into their bedroom, turned the TV on, let the dog out. The dog came back in shortly thereafter. [8] The dog sleeps on a couch in their bedroom, so it got up on the couch. They watched a little TV, went to sleep.

She said during the night sometime she heard the dog Brownie scratching at the sliding glass door which is right

beside their bed. She gets out of the bed, walks around, opens the door, lets the dog back in. The dog goes to sleep.

She wakes up at 6:30 to an alarm. The alarm is on their television set set to go off at approximately 6:30. Steve pushes her, tells her to get out of bed. She goes into the bedroom, William's bedroom, wakes him up, hears the fish tank making a lot of noise. So she goes in, checks the fish tank, realizes it needs water.

She says she turns around and looks and sees that the door between the living – I mean, the kitchen and then there's – that goes into the laundry area, then the laundry area goes into the garage, and all doors were open, including the garage door. And so she starts screaming. She goes, runs into the baby's room. She says Sabrina's missing, Sabrina's missing. She comes in. Steve comes out of the bedroom. She calls 911. She tells them what had happened, that Sabrina had been kidnapped. And then we arrive. She calls people on the phone. She goes and runs over to the neighbor's house and tells them her baby's missing. And that's about it.

[9] Q Now, with respect to your inspection of the premises, did you determine if, in fact, the sliding doors that go to the rear yard, was there also screen – some sort of screening there as well? When you'd open the glass sliding doors, was there also a screen?

A Yes. Well, there is, but it's all ripped up.

Q Okay. Can you explain that to the jury? What do you mean?

A Well, they didn't have a doggie door, so the dog just ripped the screen open and came and went as it wanted to go.

Q So those sliding glass doors, if they were not shut, the dog could go in and out through that screen; is that correct?

A That's correct.

Q Now, on the morning of the 24th, okay, you talked to her somewhere around 9:00 in the morning; is that correct?

A Yes, sir.

Q And then you participated in some other duties; is that correct?

A Yes, sir.

Q Did there come a point in time later in the morning that you wanted to talk to Marlene Aisenberg again about some possible suspects?

[10] A Yes, sir.

Q Okay. And where was Marlene Aisenberg at that time?

A She was laying on the living room couch asleep.

Q Okay. And did you wake her up?

A Yes, sir.

Q Now, to your knowledge, had she been given any sedatives or been prescribed any medication since 7:00 that morning that you're aware of?

A Not to my knowledge, no, sir. In fact, I had asked her if she needed a doctor or anything.

Q What was her response?

A No.

Q Can you please try to talk into the microphone so everyone can hear you?

A I'm sorry.

Q I'm sorry, Detective. Thank you.

Now, did there come a point in time later that day that you requested the – you and other detectives requested that the Aisenbergs proceed to the sheriff's office to take what's known as a polygraph examination?

A Yes, sir, we asked them both.

Q Okay. Now, is that a normal policy that the sheriff's office participates in with respect to certain crimes?

[11] A Yes, sir. We do that quite frequently mainly so that we can dispense with them as being possible – having anything to do with the disappearance or whatever the offense is. We do that as soon as we can to get them out as being suspects.

Q Okay. Now, on the 24th, that afternoon or that early evening, did Marlene and Steven Aisenberg respond to the sheriff's office?

A Yes, sir. I took them down to the sheriff's office.

Q Okay. And were polygraph examinations administered to both of them?

A Yes, sir.

Q And are they done independently of each – of one another?

A Yes, sir.

Q And can you tell the Grand Jury, was there a polygraph examiner – who was the polygraph examiner who examined these two?

A Detective Herb Metzger.

Q Okay. And based on his examination of the polygraph charts, did he indicate to you anything with respect to the results of those examinations?

A He stated that he believed that Steve was – he passed it with no problems. He indicated that Marlene had [12] failed it, but he was going to call it inconclusive because that her child had just been found missing.

Q Okay. And did you all – did you interview Mrs. Aisenberg or Mr. Aisenberg any further that evening after those initial polygraph exams?

A Yes, sir. While Steve was taking his polygraph, we interviewed Marlene; and when Marlene was taking hers, we re-interviewed Steve.

Q Did she provide any additional information for you with respect to the disappearance of Baby Sabrina on that first evening?

A Any new information? It was a little different, but it – I don't know that it was –

Q How was it different?

A I'd have to read through it and tell you the different inconsistencies, but there were a few about timing and things like that.

Q Now, on the following day, on November 25th, did you again request Marlene Aisenberg to come back to the sheriff's office to take another polygraph exam?

A Yes, sir, I did.

Q Okay. And did you take her down there?

A Yes, sir.

Q And did Mr. Aisenberg come as well?

A Yes, sir.

[13] Q Okay. And can you tell the Grand Jurors if, in fact, a second polygraph examination was administered to her?

A Yes. She did take the second polygraph that night.

Q And did Detective Metzger advise you whether she had passed or failed that examination?

A She failed that exam.

Q Okay. And with respect to what issues, if you recall?

A There were some inconsistencies about the doors. There were some – I don't recall all of the inconsistencies, but there were certain things that he needed to speak with her about again that didn't sound right.

Q Now, with respect to Detective Metzger telling you that she had failed the polygraph examination, did he indicate what material questions that she had failed with respect to?

A She failed all five questions.

Q Okay. And those five questions pertained to what?

A Her having knowledge about Sabrina's disappearance.

Q Okay. Now, following that examination, did you have occasion to interview Marlene Aisenberg?

[14] A Yes, I did.

Q Okay. And what was her – can you describe her demeanor?

A I guess the most significant thing is that she – we – as we began talking, she was sitting normally in her chair, and we were discussing, you know, well, can you tell me about what happened, you know, this doesn't sound right. We went back over her testimony or her interviews saying, you know, we see these problems. She goes, yeah, it doesn't make any sense.

And as we continued to talk, all of a sudden she just curled up in a ball. Her legs were up in the chair, her hands were up in her lap, and she was just – you know, she was just scrunched into the chair where you could – you could hardly talk to her because she wasn't open. You know, normally people when they sit and talk, you're very open and you talk and you have no problem, but she was like – like this, all scrunched up in her chair.

Q Okay. Now, was anyone else in the room with you when you were interviewing her?

A Detective Metzger was in there with me for a short while, and then he left because he wanted to ask Steve a question. And when he left, then, of course, I was the only one in the room with her.

Q Now, at any point when you were in the room with [15] Marlene Aisenberg on the 25th of November, did you make any threats to her to talk to you or threaten or coerce her in some way to talk to you that evening?

A No, sir. She was free to leave if she wanted to.

Q Okay. Now, after she – during your discussion she, as you've described it, curled up almost like in a little ball, what happened?

A Well, some things that we wanted information on, such as I wanted to know why she didn't have any pictures of Sabrina on her refrigerator. She had pictures of the other children, she had pictures of children that weren't hers, but there was no pictures of Sabrina.

So I asked her about that, and she said she didn't – didn't feel like she had time and hadn't taken the opportunity to go get the film developed, but there were pictures of the baby. And she also had taken a video on Saturday. So we wanted to know were there any other videos or when did – why did she take the video on Saturday and things to that effect.

So I began asking her questions about that, and she said that she had taken the video – I mean, she had taken the batteries to try to work the video. They didn't work, so she had exchanged them; she'd gotten another battery. That battery, she thought she had to charge it, and it didn't work. So finally she had gotten [16] a battery that worked and she decided on Saturday to take the video.

So – and I asked her, I said, well, where did you get the battery, and she said at Walmart. And we're continuing to talk about it, and she said, I'm glad – what she did is she was curled up in a ball, she had her hands in her

lap, and she looked down and she said: I'm glad I got the video before I did it.

And she looks up at me like – her eyes got big, and she looks back down in her lap and she's holding her hand. And I said: Marlene, you just said you're glad you got the video before you did it.

And she leans in toward me, and I lean toward her, and then the door opened and Detective Metzger came in.

Q Okay. And what did Detective Metzger tell you?

A He said that Steve said that if they weren't under arrest that they needed to get an attorney.

Q Okay. And did they ask if they were free to leave?

A Yes, and we allowed them.

Q Okay. And they wanted to go; is that correct?

A Yes, sir.

Q And you allowed them?

A Yes, sir. I took them back home.

Q Okay. Now, prior to her making that statement or [17] maybe right after, before Detective Metzger came into the room, did she give you any expression in response to the question that was inconsistent with what she told you in terms of the movement of her head where she said yes when she was doing no or vice versa?

A Yes. We asked her several times if she knew who had taken the baby, and she said – she was shaking her head no, but she was nodding yes.

Q Okay. She was saying no, but nodding yes?

A Yes, sir. So we asked her several times, and she – each time she would nod her head yes, but shake her head no.

GRAND JUROR: She would say no and shake her head yes?

THE WITNESS: She would say no and shake her head yes. That's hard to do.

GRAND JUROR: I know. I just wanted to make sure. Okay.

BY MR. KUNZ:

Q Now, is that before she made that statement about the video?

A Yes, sir.

Q Okay. Now, after you took her back home – well, let me ask you this: Can you describe her demeanor on your trip back home? Who was in the car with you, if you [18] recall?

A Agent Kerry Myers was in the front seat with me, and Steve and Marlene were in the back seat.

Q And what was Marlene Aisenberg's demeanor?

A She was laying in the seat, and Steve was rubbing her hair. In my car, you can't hear what they're saying so – but all I could do was see her lying in the seat. And she – they were talking, but I couldn't hear what they were saying.

Q Okay. Now, did you, as part of your investigation, have occasion to follow up any leads or any other possible suspects who may have taken Baby Sabrina?

A Yes, sir.

Q Okay. And if you could briefly indicate how many individuals do you recall that the sheriff's office has interviewed or leads that they've followed up with respect to the disappearance of Baby Sabrina?

A Well over a thousand.

Q Okay. And have the Aisenbergs given you any names of individuals – or did you ask either Steven or Marlene Aisenberg with respect to the name of any people who they would be suspicious of?

A Yes, sir.

Q Okay. And did you follow those things up?

A Yes, sir.

[19] Q Now, did you determine if, in fact, there was a baby-sitter who had access – who would come in and out of the house on occasion?

A Yes.

Q And who was that?

A Maria Perez, the next-door neighbor.

Q Okay. And did you ever interview her?

A Yes, sir. We interviewed her several times.

Q Now, through your interviews, have you located anyone else who you think or any person who you think may be a suspect for the taking of Baby Sabrina, the disappearance?

A No, sir. We have found no one else.

Q Now, did there come a point in time in December of 1997 where you made application to a circuit judge in Hillsborough County requesting permission to obtain electronic surveillance of the Aisenberg residence?

A Yes, sir.

Q Okay. And did you make an affidavit indicating a lot of the information that you've told the Grand Jury outlining the details and circumstances and laying out a basis that you felt they had some role with respect to the disappearance of Baby Sabrina?

A Yes, sir.

Q Okay. And did the chief circuit judge of [20] Hillsborough County enter an order authorizing the sheriff's office and the FBI to monitor conversations within that Aisenberg residence?

A Yes, sir.

Q And were calls – I'm not saying were calls, but were conversations actually recorded?

A Yes, sir, they were.

Q Okay. And were you all instructed to minimize your listening with respect to privileged or other matters?

A That's correct.

Q Now, at that particular time, had the Aisenbergs retained any counsel?

A Yes, sir.

Q And who was that?

A Barry Cohen.

Q Okay. And had Barry Cohen in pretty explicit terms told you and other members of the sheriff's office that you all were not allowed to talk to or interview the Aisenbergs?

A He did that approximately the second day after the – after Sabrina disappeared.

Q Okay. So after your interview with Marlene Aisenberg that evening, were you ever able to follow up any conversation with her about what she had said?

[21] A No, sir.

Q Now, if you can just indicate to the Grand Jury, the electronic surveillance order that the court authorized you to participate in, was that for 30 days?

A Yes, sir.

Q For a period of 30 days, and it started sometime in mid-December?

A I believe it was December 12th.

Q Okay. And that gave you authority to surreptitiously enter the Aisenberg home to place whatever listening devices you felt would be appropriate and then to monitor conversations; is that correct?

A That's correct.

Q Okay. Now, were there a number of conversations since that time period that were obtained that in your analysis indicate some suspicion with respect to the knowledge of Steven or Marlene Aisenberg with respect to the disappearance of Baby Sabrina?

A Yes, sir.

Q Okay. Let me ask you, on December 24, 1997, at approximately 11:19 p.m., was a conversation intercepted from the listening device within the master bedroom?

A I'd have to look at my notes, but –

Q Sure. Okay. You can look for that date, if you'd like.

[22] A Is this in the bedroom?

Q Right, ma'am, master bedroom, and I think it's P-2, conversation Number 98.

A December 22nd?

Q Ma'am?

A December 22nd?

Q December 28th – I'm sorry, December 24th. Maybe it would help, let me give you a copy of your application for an extension that has those calls summarized.

A Okay. That would be great.

Q Let me just – if you can tell the Grand Jury, these conversations that were intercepted, how is the clarity or the audibility of these conversations; are they crystal clear?

A No, sir, they're not.

Q Okay. And if you can explain, what's the problem with the conversations?

A Well, Marlene and Steve talk over each other all the time. Plus the equipment is placed into – I'm not too well informed about how it works, but it goes into where the phone jack is, I believe. So, you know, when you're

standing a distance away, it's kind of difficult for you to hear and understand what's going on.

GRAND JUROR: Do the Aisenbergs know that they're being recorded?

[23] THE WITNESS: No, sir.

BY MR. KUNZ:

Q Now, Detective Burton, referring you to December 24, 1997 – and let me just, before we go forward on this, are a lot of the conversations, a lot of the portions of the conversations inaudible?

A Yes, sir.

Q And by that, it's difficult sometimes to understand exactly the context of some of the sentences and some of the discussion; is that correct?

A That's correct.

Q But on other conversations there is a pretty good context that you're able to obtain; is that correct?

A Yes, sir.

Q Okay. Now, on December 24, 1997, at about 11:19 p.m., can you describe your summary of that particular conversation?

A Steve and Marlene were speaking, and during the conversation Steve stated that that amounts to 4 to $5,000 bail. She asked him: What? And then later we heard: It depends on you, you had to deal with the pain every day, you know what I'm saying, not everybody has that. And she told him that she was scared. Then he stated: On top of a little baby? And she said: I saw them together on the

4th. He was upset. I thought, gee, you know, could it be [24] dead, you know, dead? Steven replied: They belong without you – you – oh, my God, we pulled her clothes off, we – I – and then she said: Find it.

Then they discuss something about a hospital and a hallway, and Steve says: Well, it wouldn't even bother me to kill the dog. And he says: Um, yeah, I'm talking abuse. And later on in the conversation, she advised that they needed to sell the van, change that 500, baby blanket thrown away. Then he stated they advised they're going to have to because my baby back – you know, we can always take the story back.

Q Okay. Now, when Marlene Aisenberg originally was interviewed by yourself, did she indicate what was missing from Baby Sabrina's room in addition to Baby Sabrina, if anything?

A The only thing missing was a baby blanket.

Q Okay. And you all have been unable to locate any baby blanket; is that correct?

A We have not located it, no, sir.

Q Okay. Now, if we can proceed to December 28th, I think on the next page, 1997, at about 10:41 p.m., was there a conversation intercepted from the listening device also in the master bedroom?

A Yes, sir.

Q Okay. And could you give a summary of some [25] pertinent areas that you overheard?

A He told her she had – she had a stomach ache and that you don't have to worry so far. And then Marlene

stated: I hate you, I hate you for what you did to our tiny daughter. And he told her: Shut up, I know what you did to me. And she said it was her fault, we don't need to get black people to kidnap her, we need to go back, our tiny baby didn't suffer because of your – and Marlene interrupts. He said: I – I understand that, I know why you need to – then an inaudible – you're getting out of control, you won't hear me.

Q Okay. And then if you'd move ahead to page 10 for your application for extension, and if you'd locate a conversation that was intercepted on December 12th – I'm sorry, December 17th of 1997 at 5:34 p.m. from the kitchen, can you tell the Grand Jury about that particular conversation?

A Marlene and Steve were talking, and she tells him, she says: I don't like lying to my dad at all and I'm in his face. And he tells her: Well, tell your dad not to ask you any questions concerning the case 'cause you can't answer a lot. She advises, you know, everybody's so quick to think, you know, you don't understand, my parents are here just as much as – and I'll tell you one thing, you know, if it would have been my father who said about the [26] abusing first. And Steve says: I know, I've already said that already.

And they discuss someone who came up with a crazy idea and she's complaining because he tells her to shut her family out completely and that she doesn't appreciate him – appreciate it. Then he replies: But, Mar, what you need to understand, there's certain things you cannot say to your parents when they're questioning your parents. Then, technically, they're not questioning my family 'cause they're not here. There are things pending, the case, that

you cannot say to them and it's unfortunate they're so close to you, so it's for their sake.

And then later in the conversation they talk, and he says: No, there's a difference in protecting yourself and not protecting yourself, and if my being rude to your friends means protecting you, then I'll be very rude to your friends. But just you understand, I'll be very rude to all of your friends, I don't care. My pricrity is you, not them. And your priority should be yourself and your family, not them. That's why I'm rude to them.

Q Now, let me show you a transcript of a conversation from January 21, 1998, a conversation that was recorded based on a conversation between Steven and Marlene Aisenberg from their kitchen area. If you can just take a look at that, with respect to that particular [27] conversation, and looking at page 3 of the transcript, after some discussion between Steve and Marlene about food and some other matters, is there a statement made by Steven?

A Yes, sir.

Q Look at page 3, third line down. Okay. What does he say?

A I wish I hadn't harmed her.

Q Okay. What was Marlene's response?

A I know.

Q And is there an indication later in the conversation coupled with some inaudible portions of conversation where there is some discussion about that birthday party that Marlene had talked to you about?

A Yes, sir.

Q Okay. And what was stated there, as best as you could understand?

A She's asking – she said – or Steve asked: Did William even go to that party? Where did he get – and then, yesterday.

Q Now, in the midst of this conversation, was there a statement by Marlene that she indicated that something that just doesn't happen, hon, William – and then there's inaudible – could be buried. And then there's some more inaudible, and then, you know, and then some more inaudible [28] conversation. And her last statement was: Hon, she's buried in our secrets now.

A Yes, sir.

Q Now, based on your hearing that, do you believe that has reference to Baby Sabrina?

A Yes, I do.

Q Now, back on December 3rd of 1997, did you have occasion to, along with FBI Agent Kerry Myers and possibly some other detectives in your department, talk to Marlene Aisenberg about the video after you had taken a look at that video?

A Yes, sir.

Q Okay. Now, this video, can you explain a little bit – who gave that to you?

A Marlene gave it to us.

Q Okay. And did she indicate when it was taken or the circumstances surrounding it?

A It was taken the Saturday before Sabrina disappeared.

Q Okay. And her disappearance was late Sunday night or early Monday morning; is that correct?

A Yes, sir.

Q Okay. And did Mrs. Aisenberg explain to you why she had taken that videotape?

A No, not exactly.

[29] Q Well, what did she tell you about it?

A She just said the video hadn't been working and – the recorder hadn't been working and she just decided to do a video that morning.

Q Okay. Now, was anyone else in the video besides Baby Sabrina?

A William's in there. You can see Monica for just a brief second, and then there's a little girl, Kirsten Kelly, from down the street.

Q Okay. And did you ever interview anybody with respect to why that young Kirsten Kelly was there that day?

A Well, Marlene was asked and she said that she came down to visit William, but our understanding from Mrs. Kelly was that Marlene had called her specifically to ask her to come over to be in that video that day.

Q And was that something that Kirsten Kelly had ever been asked before to be in any video of the Aisenbergs?

A She'd never been down there before.

Q Now, on December 3rd – if you could explain a little bit to the Grand Jury, what did you see in the video that caused you to go and ask the Aisenbergs about anything?

A Well, there's an area on the left side of her head where it appeared that the hair is missing.

[30] Q Okay. And on December 3rd, did you ask Marlene Aisenberg and Steven Aisenberg with respect to whether that was an injury?

A I asked Marlene, and she said that her hair was – the baby's hair was thin and it parted, and then the reason why it was so visible was because the hair got stuck behind the crusty stuff behind her ears.

Q Okay. Now, did you – let me ask you, why were you asking Mrs. Aisenberg about that, that potential injury?

A Well, we thought it might come up at the America's Most Wanted. They were going to go on TV and we needed to have an answer as to what that was should we get any complaints about it. I asked her, you know, did William or Monica cut the baby's hair or what happened, and she said there's no hair missing.

Q Okay. And did she in that same conversation indicate that there were no injuries to the baby prior to her disappearing?

A Yes, sir.

Q Okay. Now, did you do anything with respect to that video? Did you take it any place?

A A detective with our department took it over to Disney World to have it enhanced.

Q Okay. And by enhanced, what do you mean?

[31] A They clarify it. There's little dots, I guess, in pictures and things like that, that's what makes the picture, and they just brought those – brought it out. I mean, everything appears much clearer. There's – you know, it's easier to see.

Q And did they make – were still photographs made of that frame of the baby, both of the baby's face and also that spot that you saw hair missing?

A Yes, sir.

Q Okay. And with respect to those photos, did you take a look at those photos?

A Yes, I did.

Q Okay. And what were your observations with respect to those photos?

A I could see a bruise under the baby's left eye. I thought I could see – when you slap somebody or hit somebody, in between your fingers you get a bruised area, and I thought I could see that on the left side of her face. It looked like there was a bruise, I believe it was right here on her arm on one or the other side of the elbow. So I was concerned about that.

Q Okay. And what did the hair look like to you on the blown-up photograph?

A It looked like it had been pulled out.

Q Okay. Now, did you do anything once you made [32] those observations? Did you contact anybody with any expertise in the area of babies?

A Yes. I took the photographs to the Child Protection Team and had Dr. Posey review them. I also took them to Dr. Brooks, William Brooks, and had him review it, and then I took it to Dr. Enid Gilbert Barness at Tampa General Hospital and had her review it.

Q And if you can tell the Grand Jury, Detective Burton, what expertise, if any, do these doctors have with respect to the area of injuries to babies?

A They're all experts in injuries to children.

Q Okay. And did they look at these photographs and tell you anything?

A Yes, sir. They indicated that there appeared to be a bruise under her left eye, that she had a bruise on her face, there was a marked area up under her lip. Dr. Gilbert Barness did see the bruise on the arm. Dr. Posey said she believed that there was a linear cut on the head where the hair had been pulled out, and Dr. Brooks agreed with all those.

Q Now, did the doctors ask if they could actually see the still frame of this video over at Disney prior to a copy having been made so they could actually get a better look at it?

A Yes, sir.

[33] Q Okay. Did you take the doctors over there?

A Yes, sir. They were all three taken over there.

Q Okay. And after they viewed the still frame photograph of that video, did they indicate that that's what their opinion was, what you just indicated?

A Their opinion was that the hair had been pulled out and the other things were unexplained injuries.

Q Okay. Now, I'm going to show you some exhibits that are marked Grand Jury Exhibit 4 – I'm sorry, 3 through 6, which are photographs. Are these photographs that you described of the still photograph of the video that was made?

A Yes, sir, they're from the video.

Q Okay. If you can just go – I guess the first two would show the head and that portion you're talking about. If you can just indicate what you're talking about with respect to the hair and what have you, and we'll pass these around to the Grand Jurors after you explain them.

A As far as the hair, the doctors are indicating that if the hair were rubbed off or pulled, that you wouldn't see that shape, first of all. They could – they could see a bruise or the linear cut here on the head, you can see it. This picture doesn't show the bruise on her arm very well. They could see a bruise here under her left eye. There's a red area here, and then there's marks, two [34] little bruises, right here on the side of her face.

Q Let me show you this one which is actually a close-up; 6 is a close-up, I think, of – if you'd just take a look at that. Is that not correct? That's a little better shot of what's –

A Yes.

Q – what's in Number 5; is that correct?

A Yes.

Q And that's the area that the doctors have indicated is consistent with hair being pulled out?

A Yes, sir. They told me that if the hair hadn't been pulled out that – you know, it's not caused by rubbing because hair can't be rubbed off of a child that age, and they believe that it had been pulled out.

Q Okay. Now, let me show you Exhibits 3 and 4 that you were just describing. The bruise – on Exhibit Number 3, the bruise that you talked about, is that under the left eye, the darkened spot?

A Yes, sir.

Q And on Exhibit 4, it looks like a mark on the left lip, lower left lip by the cheek; is that what you're talking about?

A Yes, sir. You can also see the marks on the side of the face right here. Dr. Gilbert Barness also believes that the other eye is bruised as well.

[35] Q That's not clear in the photos; is that correct?

A No, sir.

Q In fact, the bruise that you're talking about is very difficult to see; is that correct?

A Yes, sir, it is on these photos.

Q Now, did you check – or has anyone checked with the technical people who obtained this photograph from the video? Is there anything about the process in blowing

up the still frame, the photos, that would have caused the discoloration that's depicted in the photos?

A It does cause a distortion and there's no way that they can enhance it so that it will not be clear. I mean, it's just – it can't be done off photographs.

Q My question, Detective Burton, is the enlargement of these photos, was that caused – and the – these apparent – looks like there's apparent injuries, is that actually as it appears on the video or the photo, or is it a result of the blowing this up?

A No. That's how it appeared on the video.

Q Okay. So the process of getting the enlargement did not cause the discoloration that appears to be a bruise, is what I'm talking about?

A No, sir. No, sir, not at all.

Q What you're indicating is there's no way they can make a large photo, expand it, without it being distorted; [36] is that correct?

A That's correct.

Q Now, I think – as we pass those photos around, I think I may have asked you earlier, but names of individuals that were given to you by the Aisenbergs or people on their behalf, you indicated you checked them out?

A Yes, sir.

Q And did you determine alibis for a lot of these individuals?

A Most of them were polygraphed, and if they were polygraphed – or if they could not be polygraphed, then we alibied them out in other ways.

Q To exclude them as suspects?

A Yes, sir.

Q Now, did you talk to anyone else besides these doctors about these potential injuries to Baby Sabrina? And let me be more specific. Did you have occasion to interview a baby-sitter, Maria Perez?

A Yes, sir, I did.

Q Okay. And what did Ms. Perez say with respect to whether she recollected any injuries on Baby Sabrina?

A She indicated on Saturday night she had baby-sat for the Aisenbergs while they went out to dinner and to a movie, and she said that she saw a red mark under the baby's left eye. And she asked Marlene about that, and [37] Marlene said, oh, well, she must have scratched herself. Maria said it didn't look like that. It was swollen and red, but she said that was Marlene's explanation for how that happened. And the reason why she mentioned it to Marlene was because she did not want Marlene to think that she had hurt the baby when she came home.

Q Now, did you also have occasion to interview any hairdressers who the Aisenbergs had gone to to have haircuts done for their son William?

A Yes. William had his hair cut on Friday, I believe.

Q Okay. The Friday before the baby's disappearance?

A Before, yes, sir.

Q Okay. And did you interview any hairdresser there who had observed any problems with Sabrina's hair?

A Yes. She stated she noticed that, but she thought it was just because the hair had been rubbed off, was her explanation for it.

Q Okay. But this hairdresser actually observed a portion, as was indicated in the video, of a problem with Baby Sabrina's hair; is that correct?

A Yeah. She saw it exactly like that on Friday.

Q Okay. Now, did she indicate whether it was matted or it was just hair that was flattened back by the ear or something like that?

[38] A Well, she said Sabrina's hair wasn't real clean, but she said you could distinctly see that it looked like it had been rubbed off and hair had been pulled down over it to cover it.

Q Okay. Now, let me ask you one last area, Detective Burton. Did you determine, first of all, if this baby, Baby Sabrina, had been taken to any doctors at any time prior to the disappearance and had been examined physically?

A Yeah. She's been to her pediatrician.

Q Okay. And do you know, in fact, the last time prior to the baby's disappearance when the baby had been seen by a doctor?

A I believe the last time was in October. The mother had made several appointments for the child to be seen, but she cancelled them and she would reschedule them for

the next Monday. So she had missed – I believe two that she had missed, and she had not rescheduled for the 24th, which would have been the next Monday.

Q But the baby's appointments with the doctor had been scheduled at least two weeks before the disappearance and had been cancelled; is that correct?

A Yes, sir.

Q Okay. And did Marlene indicate to you why that had happened?

[39] A I don't recall.

MR. KUNZ: Ms. Desvaux Bedke, do you have anything you wanted to ask?

That's all the questions I have of Detective Burton. Do you all have any questions?

GRAND JUROR: Who's the last person other than a family person to see this baby?

THE WITNESS: The last person to see the baby, as far as we know, she was probably seen at the party on Sunday morning.

GRAND JUROR: Sunday morning?

THE WITNESS: Yes.

GRAND JUROR: And did anybody speak to the people that attended the party about this?

THE WITNESS: I spoke to all of the people that were at the party.

GRAND JUROR: The markings?

THE WITNESS: Most of the people indicated that they really didn't spend much time looking at Sabrina. They were there for a party for the children. And they did notice that she had – she was dirty, she didn't have clean clothes on, that she slept most of the time. It depended on who you talked to. We had some people that said, yeah, the baby was awake. Other people said, no, she slept most of the time. They tried to give her a bottle, she wouldn't [40] take it at noon. But as far as really spending time looking at the child, they really didn't.

BY MR. KUNZ:

Q Now, these people that you interviewed – maybe we can just explain, that party was a party for friends of the Aisenbergs or who was this party for?

A Marlene's sister Elaine was having a party for her son Jonathan, and Marlene was hosting it through her business.

Q And it was hosted at the home or at the business?

A At the business, at Playtime Pals.

Q And the majority of people who were there, did they have much interaction or had they had much interaction or contact with Marlene Aisenberg and/or her children?

A Most of them had never met them.

GRAND JUROR: This neighborhood girl who was in the video, how old was she?

THE WITNESS: She is eight.

GRAND JUROR: Did you talk to her about what Sabrina was doing that day or if she had noticed any marks on the baby at all?

THE WITNESS: We asked her. You know, she's a child, so, you know, she said, yeah, I saw her, you know, I played with her on the floor. But as far as really being cognizant of that kind of thing, at eight you really don't [41] expect them to. So she really didn't have anything to say about that.

Now, we do have a neighbor child that went over there to see Sabrina on Sunday night. She was over there from 6:00 – I want to say 6:00 to 7:00 and I think that might be wrong; it might be 5:00 to 6:00, I can't recall. But she went over to the house. She was playing with Dana – I mean, Dana was playing with Monica and William. She asked to see the baby and she was told that the baby was in bed asleep and she could not see her, and the bedroom door was closed. And that was significant to her because she always got to see Sabrina when she went over there.

MR. KUNZ: Yes, ma'am?

GRAND JUROR: When you were talking about the different conversations that was overheard, I believe the one in the kitchen where they were mentioning William and it sounded to me as if they were mentioning William and it sounded to me as if they were mentioning – William would be the boy, right, in the family?

THE WITNESS: Yes, ma'am.

GRAND JUROR: And the baby kind of in the same conversation.

THE WITNESS: Uh-huh.

GRAND JUROR: Does that give an indication that they may be – maybe they were going to do something else [42] to this child or that that child might have had something to do with the baby's disappearance?

THE WITNESS: It depends on how you – how you read what they say. Unfortunately, a lot of things are inaudible.

GRAND JUROR: Right.

THE WITNESS: But they did indicate that, you know, I saw him on her, you know, on top of the baby, then she's dead. That may be something they were formulating, but I – I can't tell you for sure.

BY MR. KUNZ:

Q Let me just raise one other issue, Detective Burton. With respect to all the conversations that were intercepted, could you describe the demeanor of the Aisenbergs? When these conversations were recorded without their knowledge, of course, was it what you expected, you know, people who have lost a child to talk about? Were their conversations consistent with what you would have expected to have overheard?

A Not at all.

Q Okay. How so? What are you talking about?

A I would expect to hear what's happened to my baby. I would expect to hear a lot of crying. I would expect to hear, you know, I hope they're taking care of her, I love her, I want her back, and we never heard that.

[43] Q And did you hear any discussion at all through the intercepted conversations about concern with

the sheriff's office, why aren't they looking at other people rather than looking at us or anything such as that?

A Not that I recall.

GRAND JUROR: There was some talk about the van, getting rid of the van and the blanket.

THE WITNESS: Yes, sir.

GRAND JUROR: Do they have a van?

THE WITNESS: Yes, sir.

GRAND JUROR: Have you gone through that van?

THE WITNESS: Yes, sir. We processed that the first day.

GRAND JUROR: You haven't found anything?

THE WITNESS: No, sir.

MR. KUNZ: Yes, sir?

GRAND JUROR: Detective, did you go through like the whole house looking for blood and signs of foul play or, you know, maybe if the baby was dead and they tried to dispose of it or something?

THE WITNESS: Yes. We did look for that, but a lot of times in a child abuse case you're not going to find any blood or anything. If it's a head injury, it's all going to be contained in the head. If it's an abdominal injury, unless it was severe enough and she began vomiting [44] blood, you're not going to have physical evidence except on the body, and it would be internal in most cases.

BY MR. KUNZ:

Q Let me follow up on that question. The baby's room, I think you indicated evidence technicians had gone through it pretty thoroughly. Was there any statement made by Marlene Aisenberg with respect to that baby's room that was not borne out by the investigation? And what I'm talking about, did Ms. Aisenberg tell either you or some other agent that she was so upset when she saw the baby missing that she had urinated in the room?

A Well, she didn't tell us that information. She indicated on the Oprah Winfrey show that she had urinated in the kitchen and on the floor in the living room area. But she never told any of us that. Steve's the one that mentioned it one time, and then the first time we heard it from her was on the show.

Q Okay. Now, did you all check the rugs when you were out there to see if there were any wet spots on any of the rugs that you could determine?

A Some of our detectives were crawling around on their hands and knees looking at spots and things on the floor to see if they were wet, if they were blood, you know, just so we could determine, you know, whether or not we needed to cut that spot out and have it analyzed, and we [45] found no wet spots.

MR. KUNZ: Okay.

GRAND JUROR: Do they own the house?

THE WITNESS: Yes, sir. They're purchasing it.

GRAND JUROR: What kind of work does he do?

THE WITNESS: He's a real estate agent.

THE FOREPERSON: Detective, did the Aisenbergs ever tell you whether the baby was a fussy baby or a good baby?

THE WITNESS: They said the baby never cries and she's been sleeping through the night since two months of age. And most of the time when she would talk about Sabrina, she'd talk in the past tense. She didn't say my baby sleeps through the night; my baby slept through the night. In a lot of her conversations we found her talking in the past tense.

THE FOREPERSON: Did you ever get a feeling or an idea that maybe this baby wasn't a wanted baby, it was an unwanted pregnancy?

THE WITNESS: She told us that she really wanted this baby and it was a planned pregnancy, they wanted a child every four years.

BY MR. KUNZ:

Q Now, did you – let me follow up a little on that on the baby. Let me just back up a little bit to the [46] report of the baby being missing. Did you talk to any neighbors who had recalled an incident of maybe – I don't remember if it's six months or a year earlier, where Mrs. Aisenberg thought her four-year-old daughter Monica was missing?

A Right.

Q Okay. Did you talk to any neighbor about that incident?

A I talked to several neighbors about that.

Q And did they describe the condition of Marlene Aisenberg when she reported to those neighbors asking about where is that baby?

A Yes, sir. What they indicated to me was that Monica – they didn't used to have a fence around their home, so Monica would just go out the sliding glass door and kind of walk off. And when she did, they realized she was missing and they came out and they were screaming, knocking on everybody's door, where's Monica, screaming her name, going up and down the neighborhood. Marlene jumps in her van, takes off down the street and around the corner trying to locate her. She was eventually located by a neighbor several streets away. She had walked off.

GRAND JUROR: But she was physically emotionally upset?

THE WITNESS: She was hysterical, crying, yelling, [47] screaming her name, that kind of thing.

GRAND JUROR: How old was Monica?

THE WITNESS: I believe she was two and a half or three.

BY MR. KUNZ:

Q Now, this same neighbor, did she – was she contacted by Marlene the same morning, right after the 911 call, and asked about if she had seen Baby Sabrina?

A Yes.

Q Okay. And did this neighbor describe her demeanor to be totally different than that prior situation?

A She said it was completely different, that she didn't cry, she wasn't upset, she just came over and stood in the middle of the road and said Sabrina's missing and that was it. She went – she came to her house. Then they both went to the neighbor's house and she indicated the same thing, that Marlene was totally different.

GRAND JUROR: Does she take anything like Prozac or something?

THE WITNESS: We've requested those records. We don't have them.

GRAND JUROR: In regards to the videotape, it's been indicated that this was the very first video that she made of a baby that was five months old. Did you ask her why no other videos had ever been made like when the baby [48] came home from the hospital?

THE WITNESS: Well, she indicated that the battery wasn't working.

GRAND JUROR: You've stated the house was all cluttered. Was it nasty or was it just cluttered?

THE WITNESS: It was filthy.

GRAND JUROR: I know you've done the lake checks and the ground checks in the immediate area. Is there any recreational activity that the husband or wife had done outside of the area that possibly you could check those places, like if he has a favorite fishing hole or something like that, that's not in the immediate area?

THE WITNESS: We've checked approximately five miles in the surrounding area. He used to play soccer,

but he stopped doing that. Really the only thing they do is go to work and come home.

GRAND JUROR: They both work?

THE WITNESS: Yes, sir. She has the Playtime Pals business and he is a real estate broker. He was a real estate broker in Pasco County up at Willow Bend subdivision off of 54, I believe. He's recently been moved to the Brandon area.

GRAND JUROR: So her sister or something has a day care; is that who takes care of the baby while she's working?

[49] THE WITNESS: She says that she takes care of the baby. Her mother, Joan Sadowski, said that she takes care of the baby for her a lot and if not, if she can't do it, then Marlene takes the baby to her business.

GRAND JUROR: And has any of these people seen any sign of child abuse in any way or do they have any –

THE WITNESS: She only has one employee, her name is Ginny Westberg, or Virginia Westberg, and they're very close friends. We've interviewed her. She indicates that, you know, mom and dad are wonderful.

GRAND JUROR: Do they still have the electronic surveillance?

THE WITNESS: The electronic surveillance, yes, ma'am.

GRAND JUROR: Do they know about it?

THE WITNESS: Do they know about it? No, ma'am.

MR. KUNZ: Anything else for Detective Burton?

GRAND JUROR: He had asked a question earlier before you came in and it's a horrifying thought, does she have a garbage disposal?

THE WITNESS: Yes, she does. But I looked in the sink. It was full of dirty dishes and baby bottles and things like that, but I couldn't find anything in there. And for her to clean up that amount of blood to do that, we didn't find anything right in the sink area.

[50] THE FOREPERSON: You said there was no photographs on the refrigerator of the baby. Were there any photographs around the house of the baby at all?

THE WITNESS: Well, I thought I saw a picture of her, but it ended up being Monica. Now they have pictures in the house, but they didn't then.

GRAND JUROR: They didn't prior to that day?

THE WITNESS: No, ma'am.

GRAND JUROR: If they were to have an independent guy come in and check for bugs, for those electronic listening devices, then they could put on some theatrics for you. Do you think they might do that?

THE WITNESS: Anything's possible.

GRAND JUROR: You know, if they do that, they can come up with their own conversations for you.

THE WITNESS: That's true. We have not – we have a deputy stationed outside their home that monitors

who comes and goes, because they're requested that we be there. So we're out there to protect them from the news media and things like that, and we haven't had any information that anybody went in to sweep for any bugs in the residence.

GRAND JUROR: I guess one thing that really disturbed me, you know, Mr. Kunz said to, you know, disregard what we had read and seen, but I guess the one [51] thing that keeps coming to mind is when I guess you were taking them, because I remember seeing you, when you were taking them to do the polygraph test and they were laughing.

And I had made the comment to my husband at the time, I said if that would have been me, I would have been totally, totally incoherent. You couldn't have – I would have been so hysterical, you would have probably had to pick me up and put me in the car. And here was a lady that was laughing.

THE WITNESS: She laughed a lot.

MR. KUNZ: We've just got a couple of more questions.

BY MS. BEDKE:

Q Detective Burton, Rachelle Desvaux Bedke, also with the U.S. Attorney's Office. I just wanted to follow up on a couple of questions that the Grand Jurors mentioned. One gentleman asked if Marlene worked; could you describe what her schedule was, her work schedule?

A She worked about ten hours a week.

Q But her husband works full time?

A Yes.

Q Another Grand Jury [sic] asked about whether it was a planned pregnancy. Did you find out anything else about that issue?

[52] A The neighbor we talked to indicated that Marlene was what she thought was not happy about the pregnancy because she was getting ready to go up North and she wanted her college friends to see her very thin. So her impression from Marlene was that this was not a planned pregnancy and she was not happy about that. And then she had a tubal ligation right afterwards so she couldn't have anymore children.

Q Right after the birth of Sabrina?

A Yes.

Q You had indicated that there were pictures of William and Monica on the refrigerator, but no pictures of Sabrina; is that correct?

A That's correct.

Q Did you look in Mr. Aisenberg's office to see if there was any indication like that?

A Another detective went to his office. They found pictures of Monica and pictures of William, but no pictures of Sabrina.

Q When you looked in the house the first day that you responded, was there anything else about their supply of baby items that you noted?

A Well, there were only approximately six jars of baby food, four diapers, a half a can of powdered formula

and a half a box of cereal, and that was it. She had no [53] other baby items.

Q What about baby bottles?

A There were a couple of dirty bottles in the sink but there were none made up for that – for that day.

Q Was there an instance when a neighbor came to the house to try and assist Marlene in cleaning something up, cleaning the house up, and asked about the baby bottles?

A Yes. And I was told by an agent that Marlene said, well, you can get rid of them, I don't need them anymore.

Q Just throw them away?

A Yes, ma'am.

GRAND JUROR: When she went to Publix that day, did she buy anything in relation to Sabrina, any kind of groceries for the child?

THE WITNESS: No, ma'am.

GRAND JUROR: Do they have a septic tank system or a county sewer system?

THE WITNESS: They're on the county sewer system.

GRAND JUROR: Is it a county system or is it a contained system within that housing project?

THE WITNESS: Oh, geez, I don't know.

GRAND JUROR: How about baby clothes? Were there a lot of baby clothes for the baby or just a few [54] outfits?

THE WITNESS: She had a few things hanging up in the closet. There were bags of clothes, baby clothes and children's clothes on the floor. She had some items in the dresser drawer.

GRAND JUROR: What did the baby's room look like? I mean, you know, was there a crib with a bunch of toys in it and a rocking chair and a changing table?

THE WITNESS: She had a changing table, a dresser, a bed, a crib, a few toys. It was in disarray. It wasn't clean, but – did I answer your question?

GRAND JUROR: Yes.

GRAND JUROR: You say he sold real estate?

THE WITNESS: Yes, ma'am.

GRAND JUROR: Did he work for an agency and go around the county or for one development?

THE WITNESS: He worked for MI Homes and worked individual developments selling new homes.

GRAND JUROR: Have any of those developments ever been checked?

THE WITNESS: Yes, ma'am.

GRAND JUROR: You mentioned something about a discrepancy between what the 911 call said, go check Monica, versus what she told – I can't remember if we had asked specifically about that.

[55] BY MR. KUNZ:

Q Do you recall the 911 telephone call, Detective Burton? Did that indicate on the phone in response to the

911 operator that she should – were there any other children missing, and could you hear on the taped call of her telling Steve, her husband, to go check Monica's room?

A Yes, sir.

Q Okay. Now, did she give some contrary statement on one of the talk shows – I think maybe Special Agent Myers may have referred to it – wherein she indicated she first checked all the baby – all the children's rooms and then made the 911 call; do you recall that?

A Yes.

Q So there was a difference in what she had said?

A Yes, sir.

Q Okay. But that's based – not to you all in terms of law enforcement agents, but based on a statement she made to the media; is that correct?

A That's correct.

MR. KUNZ: Anything else for Detective Burton?

GRAND JUROR: Was she up to date on her immunizations, could they tell?'

THE WITNESS: It's been a long time since I reviewed those, but I believe that she was.

[56] BY MR. KUNZ:

Q One last thing: Did you ask Mrs. Aisenberg if she could produce the baby's birth certificate?

A Yes, I did.

Q Okay. And what did she tell you?

A She said she didn't have it, she hadn't sent the paperwork in.

Q And how old is the baby?

A She was five months.

MR. KUNZ: Anything else?

Okay. Thank you, Detective Burton. You may step down.

(Witness excused at 12:40 p.m.)

* * *

[57] CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a correct and complete report of the proceedings detailed therein, reported by me personally and transcribed under my supervision.

Feb. 10, 1998
DATE

/s/ Debra Lombardo
DEBRA LOMBARDO,
Grand Jury Reporter

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GRAND JURY 97-3-25

TESTIMONY OF LINDA BURTON

PLACE: Grand Jury Room
Federal Building
Tampa, Florida

DATE: October 21, 1998
11:25 a.m.

COURT REPORTER: Deborah Flatow, RPR

APPEARANCE

For the UNITED STATES ATTORNEY:

STEPHEN M. KUNZ,
RACHELLE DesVAUX BEDKE,
Assistant United States Attorneys

RE: Steven and Marlene Aisenberg

[2] LINDA BURTON,

having been duly sworn as both an agent and a witness before this Grand Jury, testified as follows:

THE FOREPERSON: Thank you. Please be seated. Would you please state your name?

THE WITNESS: Linda Burton.

THE FOREPERSON: Would you spell that, please?

THE WITNESS: B-U-R-T-O-N.

MR. KUNZ: Can you speak up a little bit?

BY MR. KUNZ:

Q. Detective Burton, you testified on a prior occasion before this grand jury; is that correct?

A. That's correct.

* * *

[39] A. The first day we polygraphed her, and basically after the interview we just went in and told her that she [40] had failed the test. We did question her a little bit more about, you know, you're not passing, why aren't you passing, what could be the problem, and things like that. And that's basically all she said the first time. It was different the second time.

Q. And what type of questions was she asked in the polygraph that the examiner felt that she was not being truthful?

A. Most of those questions were, like I said, you know, Did you have anything to do with your child's disappearance? Do you know who might have taken your child? I don't remember all five questions. But they're given five questions, and then they have – we do a base line to see what their normal heart rate and all the rhythms that we check what they're like, and then she's polygraphed the third – the second time with – it's basically the five questions. You know, these are the important questions, and this is what we're going to ask. So she knew those before.

And then after they fail it or it becomes inconclusive, then we go back in and say you failed it, can you tell me why, and then we just question them, you know, ask her questions.

Q. Now, the second time when you talked to her again and advised her she had failed, what was her response and what did y'all talk about?

[41] A. The Detective Metzger and I were talking to her briefly at first telling her that she had failed. And we continued talking, and then Detective Metzger realized that I was able to have more contact or she was paying more attention to me than she was to him, and so he got up and left the room.

And during the interview with her, I'm asking her what happened. We knew that she had gone to the store. We knew that she had purchased the video, and that's what I was asking her about. Why – you know, when did you get the battery? I understand your video was not – your video recorder was not working. We went into that a little bit.

And then all of a sudden she looks down in her lap and she's holding her hands and she's kind of wringing them, and she looks up at me and she says, "I'm glad I got the video before I did it."

Q. What happened next?

A. And the door opened and a detective came in, and we could not continue the interview.

* * *

[59] Q. Now, with respect to all those pertinent calls that were obtained pursuant to the court order, were they transcribed?

A. Yes, sir.

Q. And in this book that you've given out to the grand jurors, are there transcripts relating to each of those calls?

A. To some of them. I didn't bring every P call that we had.

Q. No. I meant the ones we're going to play today?

A. Oh, yes, sir.

Q. And, again, these transcripts were they done, as you indicated, by individuals who sat and listened to the tape recording and handwrote what they heard the individual [60] parties say? Is that how they were prepared?

A. Yes, sir.

Q. And then you've listened to those calls as well; is that correct?

A. Yes, sir.

Q. And you compared the transcribe –

A. Yes.

Q. – transcript?

A. Yes, sir.

Q. Now, are the transcripts accurate as best they can in terms of identifying the speakers and the content of the conversation?

A. Yes, sir.

Q. The best as humanly possible; is that correct?

A. We believe so, yes, sir.

Q. Now, during the course of the court order, did you determine that from a technical point of view there were some difficulties with the transmitters, that they weren't clear enough or weren't loud enough?

A. Yes, sir. We did have some problems with that.

Q. And did law enforcement attempt to make them better, for lack of a better phrase, make it so that they would pick up the conversation a little better?

A. Yes, sir.

Q. To the best of your recollection or understanding, [61] was it successful in making real clear and complete conversations?

A. No, sir, it was not.

Q. All right. Why don't we do this. The conversations, were they broken down in terms of the area of the home, as you've indicated?

A. Yes, sir. We separated them kitchen and bedroom.

Q. Now, could we start – do you have the copies of those conversations – some of those conversations with you, first of all, starting with the kitchen area?

A. Yes, sir, I do.

Q. Okay. And the first conversation, is that a conversation that you've labeled P No. 2, call No. 20?

A. Yes, sir.

Q. And was that intercepted on December 16th, 1997, which was a Tuesday?

A. Yes, sir, it was.

Q. Okay. And in this particular conversation, the speakers are whom?

A. The speakers in this conversation are Marlene and Steve.

Q. Do you have that tape before you?

A. Yes, sir, I do.

Q. Okay. Could you play that for the grand jury now?

A. Yes, sir.

[62] MR. KUNZ: Ladies and gentlemen, your transcript books, if you would look, there is a section that says kitchen – it's P calls and it says kitchen. And the very first call listed there should be P No. 2.

And, again, ladies and gentlemen, as we advised earlier this morning, just like the other transcripts, these are an aid for you to listening to the tapes. The evidence is the tape recording itself of the conversation. These are prepared to assist you in listening to the speakers and identifying the speakers and the gist of the conversation, okay. And if there is a discrepancy between what's on this transcript and what's – what you hear on the tape, it's what you hear on the tape that governs. Okay?

BY MR. KUNZ:

Q. Okay. Go ahead, Detective Burton, you can play this first conversation.

(Tape recording published.)

BY MR. KUNZ:

Q. Now, Detective Burton, with respect to this first conversation, can you tell the grand jury what the significance, if any, was with respect to this conversation that occurred on December 16th, 1997?

A. We felt the most important thing was that Steven was saying he was – that he wanted to make sure that no matter what went on in their house was none [sic] else's business [63] and she wasn't to talk to any of her friends, everything was supposed to be kept there, which we thought was an important statement.

* * *

[65] A. Yes, sir.

Q. And was that intercepted on December 17th, 1997 –

A. Yes.

Q. – which also was a Wednesday?

A. Yes, sir.

Q. Okay. And could you – do you have that conversation before you?

A. Yes, sir, I do.

Q. Could you play that for the grand jury, please?

A. Yes, sir.

(Tape recording published.)

GRAND JUROR: You can hear Gayle Sierens real clear on there.

BY MR. KUNZ:

Q. Detective Burton, obviously you could hear a portion of the television pretty well; is that correct?

A. Yes, sir.

Q. Now, here at the beginning of that particular conversation, Marlene indicated she didn't like lying to her dad; is that correct?

A. That's correct.

Q. Okay. Now, do you know what they're talking about, her – Marlene and Steven Aisenberg at that point?

A. No, sir.

Q. Do you believe – based on the context of this [66] conversation, is it reasonable to conclude that it relates to the investigation?

A. Yes, sir.

* * *

[69] A. No, sir, I have not.

MR. KUNZ: All right. Ladies and gentlemen, if [sic] would take a look at your transcripts, we're going to skip ahead to the bedroom – some of the bedroom telephone calls – not telephone calls – conversations in December. We want to keep them in chronological order. These are transcripts – it goes from the kitchen into the bedroom.

We're gong to shift – if you can go to your bedroom – the next section after kitchen is P 21, the kitchen. I think it's the last one. Then bedroom it starts with P No. 2

bedroom, if you can find the bedroom section of the transcripts.

BY MR. KUNZ:

Q. Detective Burton, do you have a tape recording of a conversation that occurred on December 24th, 1997?

A. Yes, I do.

Q. That's Christmas Eve; is that correct?

A. Yes, sir.

Q. Okay. And this particular conversation is from the bedroom, P No. 2, call No. 98; is that correct?

A. That's correct.

Q. And this was intercepted also pursuant to the court order; is that correct?

A. That's correct.

Q. Okay. And the individuals talking in this [70] conversation are whom?

A. Steve and Marlene.

Q. And can you play this conversation for us, please?

A. Yes, sir.

MR. KUNZ: Just hold one second. Can you find that okay? Everybody find it?

THE WITNESS: These are harder to hear, Steve. These are much harder to hear in the bedroom. So you need to – you'll have to pay more attention.

GRAND JUROR: Do we have kids screaming in the background?

THE WITNESS: I don't think so.

(Tape recording published.)

GRAND JUROR: Is that the other phone that we keep hearing ring?

THE WITNESS: Yes.

GRAND JUROR: That's what I thought.

THE WITNESS: You can hear the phones from the – from her business phone.

GRAND JUROR: That's a pretty bad statement about killing the dog.

GRAND JUROR: I know.

GRAND JUROR: How in the world were they able to get all of this?

THE WITNESS: We spent hours and hours listening [71] to tapes. We had to get used to their voices and –

MR. KUNZ: Do y'all want to hear that conversation again or do you want to just move on and we'll see –

GRAND JUROR: No. Go ahead.

GRAND JUROR: Move on.

GRAND JUROR: We're reading it. We can read it.

BY MR. KUNZ:

Q. Why don't you tell them – Detective, you can tell everybody what page – what part of the transcript you're in.

A. I'm sorry?

Q. The transcript – what portion of the transcript are you in?

A. Do I what? I'm sorry?

Q. Are you going to play the same tape or move to the next tape?

A. Oh, I was going to move to the next tape.

Q. I thought you were going to go back to a specific part. I'm sorry. I misunderstood. Why don't you do the next tape. Is that P No. 3, call No. 132?

A. Yes, sir.

Q. That was Sunday, December 28th, 1997?

A. Yes, sir.

Q. Would you play that, please. And is there a long lead-in on this? The synopsis looks very short.

[72] A. You can hear them just whispering a lot. They have people in the other room. They have family members. We were still sitting out in front with the deputy so we knew who was coming and going from their house. So they had the guests in the front – in the living room, and they had gone to their bedroom to talk to each other.

Q. Okay. Play this conversation, please.

(Tape recording published.)

BY MR. KUNZ:

Q. Now, with respect to that last call, Detective Burton, the discussion between Steven Aisenberg and Marlene Aisenberg, he was concerned about what? What did you understand that conversation to be talking about?

A. I think that she's talking to people, and he's telling her she needs to be quiet and not to tell them what's going on, not to give out any of their secrets, and, you know, that she's not allowing him to protect her from whatever it is that she's done.

Q. Okay. How about the next call, P No. 4, call No. 133, do you have that before you?

A. Yes, sir.

Q. Was that intercepted on Sunday, December 28th, 1997?

A. Yes, sir.

Q. Can you play that conversation to the grand jury, [73] please?

(Tape recording published.)

* * *

[74] BY MR. KUNZ:

Q. Before we go to the next conversation, Detective Burton, which was intercepted at P No. 17, call No. 955 from the kitchen on January 21st, 1998, this next conversation, [75] is there something that's relevant to what something that y'all did in terms of showing the Aisenbergs some photos from the videos? Is this about the same day or is this different?

A. I believe this was right around the time we showed them – we had made photographs, and then we took them over and showed them.

Q. With respect to the apparent bruises and the hair being removed; is that correct?

A. That's correct.

Q. And this was the conversation that was intercepted after your confronting the Aisenbergs with that; is that correct?

A. That's correct.

Q. And that's on January 21st, 1998. Do you know what time that was, this P No. 17?

A. I believe it was about 8:15 at night.

Q. Okay. And do you have that tape before you?

A. Yes, I do.

I can't get the tape in. Okay. What am I doing wrong? I can't get it in.

Q. Can't get it in?

A. No.

MR. KUNZ: Ladies and gentlemen, I was going to do one more call and then break. It's five after 4:00. It's a [76] little longer than we thought today. We can't seem to get this tape –

THE WITNESS: Well, I'm sure it's human error.

MR. KUNZ: It doesn't want to go in?

THE WITNESS: Well, not for me. I must have done something wrong.

MR. KUNZ: There you go. All right. We'll try this last call.

BY MR. KUNZ:

Q. Okay. Will you play that tape, please, Detective? Thanks.

A. Yes, sir.

(Tape recording published.)

MR. KUNZ: Okay. Why don't we break for the day.

* * *

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GRAND JURY 97-3-25

TESTIMONY OF LINDA BURTON

PLACE:	Grand Jury Room Federal Building Tampa, Florida
DATE:	November 4, 1998 1:25 p.m.
COURT REPORTER:	Kay E. Sanford

APPEARANCE

For the UNITED STATES ATTORNEY:

STEPHEN M. KUNZ,
RACHELLE DESVAUX BEDKE,
Assistant United States Attorneys

RE: Steve and Marlene Aisenberg

[2] LINDA BURTON,

having been first duly sworn as both a witness and an agent before this Grand Jury, testified as follows:

THE FOREPERSON: Please be seated.

Please state your name and spell it for the record.

THE WITNESS: Linda Burton.

BY MR. KUNZ:

Q Detective Burton, you have testified on prior occasions before this Grand Jury; is that correct?

A That's correct.

Q And more specifically, Detective Burton, have you brought with you today several conversations or tape recordings of conversations that were intercepted pursuant to court order with respect to Marlene and Steven Aisenberg?

A Yes, I did.

Q Have you also produced transcripts of these conversations that are accurate with respect to the identity of the speakers as well as the context and what is being said with respect to those taped conversations?

A Yes, sir.

MR. KUNZ: Ladies and gentlemen of the Grand Jury, like I told you the last time we met with respect to the playing of the tape recordings, the transcripts are merely an aid for you in listening to the tape recordings [3] themselves. If there is a difference between what you hear on the tape and what you see on the transcript, the tape is what governs. Again, the transcript is just to assist you and aid you in hearing some of the conversations, the context, and to identify who is talking at a specific time.

BY MR. KUNZ:

Q What tape recordings, the first one, Detective Burton, that we're going to start with this afternoon?

A Twenty.

Q Okay. And that was P-Call Number 20 from the kitchen; is that correct?

A That's correct.

Q With respect to the transcripts that were handed out to the Grand Jurors, the starting point was marked with a plastic clip; is that correct?

A That's correct.

Q All right. Can you move that microphone close to you, Detective Burton – you have a soft voice – so we can hear you?

Now, can you tell us with respect to P-Call Number 20 from the kitchen, what date was this particular conversation intercepted, ma'am?

A January 25th of '98.

Q Again, referring to the kitchen, this was with respect to the electronic surveillance device that was located in [4] the kitchen area of the residence?

A Yes, sir.

Q And what time was this particular conversation intercepted?

A At 9:53 in the morning.

Q And who are the speakers in this conversation?

A Steve and Marlene.

Q All right. Can you play that conversation for the jury, please?

MR. KUNZ: Again, ladies and gentlemen, with respect to these headsets, remember, there's an on/off switch on the bottom right.

(P-Call Number 20 published to the jury.)

BY MR. KUNZ:

Q Now, Detective Burton, there was a reference on there about – I think Steven Aisenberg, on page 3, in the course of the conversation that is reflected on page 3 of the transcript, Steven Aisenberg is reported to have said "You know this damn clip is also backfiring [sic] us. You got to be very lucky. You know what I'm saying? How many other people did you tell?"

What was Steven Aisenberg talking about there?

A That was after we had shown them the pictures of the video, so we believe that they were talking about the video where the baby was crawling on the floor.

[5] Q So the clip that he is talking about is the video?

A Right. That's what we believe.

Q So this conversation, they are also, again, indicating their concern about what they had told to individual people; is that correct?

A That's correct. They've told them that they thought it was – that her polygraph was inconclusive. And she had been told that she had failed the polygraph on both occasions, but we called the first one inconclusive.

* * *

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GRAND JURY 97-3-25

TESTIMONY OF LINDA BURTON

PLACE: Grand Jury Room
Federal Courthouse
Tampa, Florida

DATE: September 8, 1999
9:55 A.M.

REPORTER: Kay E. Sandford

APPEARANCE:

FOR THE UNITED STATES ATTORNEY:

STEPHEN M. KUNZ,
Assistant United States Attorney

RE: STEVEN AISENBERG and
MARLENE AISENBERG

[2] LINDA BURTON,

having been first duly sworn as a witness and an agent before this Grand Jury, testified as follows:

* * *

[16] Q. Now, you've interviewed Nancy Gray; is that correct?

A. Yes, I have.

Q. Okay. And Nancy Gray testified before this Grand Jury a while back. And are you familiar with Nancy Gray telling this Grand Jury under oath that Marlene Aisenberg had told her on November 24, 1997, that she

had – that Marlene had gotten up to waken Baby Sabrina, found Sabrina missing and then had urinated all over herself wetting the floor?

A. Yes, sir.

Q. Now, do you know if, in fact, any statements were made by either Steve or Marlene to any agents similarly?

A. Not until later that day on the 24th. It was not told to the responding deputies during the first interviews conducted with Steve or Marlene.

[17] Q. Now, did Steve subsequently tell an officer with the sheriff's office that, in fact, his wife had urinated on the kitchen floor?

A. Yes, sir.

Q. Okay. And subsequently, did he put that in a written statement on or about November 25th, the following day?

A. Yes, sir, he did.

Q. Now, if you could explain – I think you may have told the Grand Jury previously – but what did you guys do – you being you and other law enforcement agents – on the morning of November 24th? Did you look around to see if, in fact, there was anything wet on the carpet or on the floor or anything such as that?

A. Yes, sir. We were looking – actually, one of our detectives got down on the floor looking for dirt, blood, anything wet that we might need to take a sample of that and have it analyzed.

Q. Okay. Now, Steven Aisenberg had told law enforcement officers a couple of times that Mrs. Aisenberg, due to her hysterical condition of finding her child missing, had urinated all over herself and on the kitchen floor; is that correct?

A. Yes, sir.

Q. Now, based on the photographs of the scene and [18] your physical inspection of the scene, did you observe any indication that any liquid had been poured or been placed on that kitchen floor and then either cleaned up by either you or somebody else?

A. No, sir.

Q. Would you have seen it, based on –

A. Yes, sir.

Q. – the condition of the floor?

A. We spent a lot of time especially in the kitchen area and there were no wet spots and no cleaned up spots on that floor.

Q. And how can you be sure of that?

A. Well, visual – visually. Plus, like I said, the detective got down on the floor. I mean, I don't know if you all remember the pictures, but her kitchen floor was very, very dirty. So if there had been anything wet, we should have been able to find mud or, you know – or if she had cleaned it up, it would have – you would have noticed it because of the condition of the house.

* * *

[32] Q. Now, also on December 3rd, did you discuss with – you and agents of the FBI discuss with Marlene Aisenberg about whether there were any injuries to Baby Sabrina with respect to the video that was taken two days before the reported disappearance?

A. Yes, we did.

Q. Okay. More specifically, had you observed in the video what appeared to you to be a bald spot?

A. Yes, sir.

Q. Okay. And did you talk to Marlene about that?

A. Yes, we did.

Q. And your purpose for discussing with her the condition of the baby, did it have something to do with respect to information you were putting out through the media with respect to any identifying characteristics, for example?

A. Yes, sir. That would be extremely important for everyone to know about.

Q. And did – in response to your question of Marlene Aisenberg whether there was any bald spot on Baby Sabrina's head, what was Marlene's response?

A. She said it was parted and it was stuck in the crusty stuff behind her ears.

* * *

[34] Q. Okay. And on December 15, 1997, did Steven Aisenberg and Marlene Aisenberg tell agents of the FBI that they no longer wanted any law enforcement agents

inside their residence either to provide protection or to monitor for any ransom calls?

A. Yes, sir.

Q. And at that time when they asked the FBI and FDLE or just law enforcement to leave and not to be inside their residence, was – the alarm system that they had in their residence, was that being monitored externally?

A. No, sir, it was not.

Q. Okay. And did you learn that that would not be monitored – that being the alarm system – would not be monitored externally until approximately four days later?

A. That's correct.

* * *

[60] Q. Now, on January 5th of 1998, about 5:55 p.m., was there another conversation that was intercepted, one that's not been played to the Grand Jury today, from the kitchen area in which Steve told Marlene that she needed to pay attention to what's around her and that they should discuss this in the bedroom?

A. Yes.

Q. Okay. And do you know what they were referring to or what they were talking about?

A. We think where they actually may have placed the baby's body in the shed.

[61] Q. Okay. Now, was there some conversation there about –

A. Right.

Q. – Marlene asking Steve, what if the authorities were to check the shed?

A. Yes.

Q. Okay. And Steve replied, "You know nothing;" is that correct?

A. That's correct.

Q. Okay. Now, were you ever able to determine the shed or find out what shed they were talking about?

A. No, sir. We looked, but we could not find – find one.

* * *

[70] Q. Now, through the conversations that you've listened to and that were intercepted pursuant to court order, was there also a conversation on January 25, 1998, at about 9:52 in the morning?

A. Yes, sir.

Q. Okay. And was there any discussion between Steve and Marlene about Steve concerning what he may have told the rabbi who had come over to the residence the evening of the disappearance?

A. Yes, sir.

Q. Okay. What was discussed there?

A. Basically he talked with the rabbi about if he remembered whether or not he had said that Marlene had failed the polygraph or if she had been inconclusive. And the rabbi basically said, I don't remember what you told me, but I'll go along with whatever you say.

Q. Now, did Steve tell Marlene that he had told the rabbi that the police were, quote, turning things up that we have to explain, unquote?

A. Yes, sir.

[71] Q. Okay. And did Steve and Marlene discuss that the People Magazine article on them and the disappearance of Baby Sabrina from their perspective was backfiring on them and Steve again warned Marlene to be careful of what she says and again asking her who else did she tell?

A. Yes.

Q. Now, also did they have a discussion with respect to what had happened on the evening when you had interviewed Marlene on November 25, 1997?

A. Yes, sir.

Q. Okay. What did they say in terms of their discussion? More specifically, was it discussed between Marlene and Steve that Steve had told her to fake it, that she came out – Marlene came out and grabbed her hand and that there was a discussion in the hall before they left after she had been told that she had failed the polygraph?

A. Yes, sir.

Q. Okay. And was that in reference to your interview of her on the 25th and then Steve's interruption of the interview and then Marlene acting catatonic until after the agent took her home?

A. Yes, sir.

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